Virgin Records America, Inc v. Thomas Doc. 304

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CAPITOL RECORDS INC.,
a Delaware corporation;
SONY BMG MUSIC ENTERTAINMENT,
a Delaware general partnership;
ARISTA RECORDS LLC,
a Delaware limited liability company;
INTERSCOPE RECORDS,
a California general partnership;
WARNER BROS. RECORDS INC.,
a Delaware corporation; and
UMG RECORDINGS, INC.,
a Delaware corporation;

Plaintiffs,

v.

ORDER
Civil File No. 06-1497 (MJD/RLE)

JAMMIE THOMAS-RASSET,

Defendant.

Andrew B. Mohraz, David A. Tonini, and Timothy M. Reynolds, Holme Roberts & Owen, LLP, and Felicia J. Boyd, Kara L. B. Barrow, and Mary Andreleita Walker, Faegre & Benson, LLP, counsel for Plaintiffs.

Joe Sibley and K. A. D. Camara, Camara & Sibley, LLP, and Garrett D. Blanchfield, Jr., Reinhardt Wendorf & Blanchfield, counsel for Defendant.

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I. INTRODUCTION

This matter is before the Court on Plaintiffs' Expedited Motion to Preclude Defendant from Objecting to Plaintiffs' Certificates of Copyright. [Docket No. 288] The Court held a telephonic hearing on June 8, 2009.

II. DISCUSSION

Plaintiffs ask that the Court preclude Defendant from objecting to their non-certified Certificates of Copyright or, in the alternative, that the Court take judicial notice of the documents under Federal Rule of Evidence 201. In accordance with the Court's oral ruling during the telephonic hearing, Plaintiffs' motion is denied.

At issue are copies of the Certificates of Copyright from the U.S. Copyright Office for the twenty-four sound recordings at issue in this case, designated as Plaintiffs' Trial Exhibit No. 3. Defendant has expressed her intent to object to the documents at trial because they are not certified as true and correct copies by the U.S. Copyright Office, so they do not qualify as self-authenticating public records under Federal Rule of Evidence 902(4).

A. Effect of First Trial

Plaintiffs argue that their ownership of the sound recordings is not at issue in this retrial. They claim that the jury verdict in the First Trial implicitly determined that Plaintiffs had properly registered their copyrights, and that the Court did not set aside the verdict based on that issue. Plaintiffs further assert that Defendant has never previously raised the issue of the need for certified copies and did not object to these non-certified copies during the First Trial. Plaintiffs conclude that it will be difficult and expensive to now attempt to obtain certified copies from the U.S. Copyright Office in time for trial.

The Court's Order granting a new trial in this matter granted an entirely new trial on all issues. The fact that Defendant did not object to Plaintiffs' evidence of registration in the First Trial does not preclude Defendant from putting Plaintiffs to their burden of proof on this issue in the retrial.

B. Judicial Notice

In the alternative, Plaintiffs ask that the Court take judicial notice of the Certificates of Copyright in Plaintiffs' Trial Exhibit No. 3. Here, Defendant vigorously challenges the authenticity of the registrations and Plaintiffs' ownership and registration of the copyrights at issue, so judicial notice is inappropriate. See Fed. R. Evid. 201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A., Inc., 146 F.3d 66, 70 (2d Cir. 1998) ("Because the effect of judicial notice is to deprive a party of the opportunity to use rebuttal evidence, cross-examination, and argument to attack contrary evidence, caution must be used in determining that a fact is beyond controversy under Rule 201(b).") (citations omitted).

III. CONCLUSION

The Court denies Plaintiffs' motion to preclude Defendant from objecting to Plaintiffs' non-certified Certificates of Copyright. The Court makes no determination regarding whether, consistent with the Rules of Evidence and the Rules of Civil Procedure, Plaintiff can prove ownership and registration through means other than certified Certificates of Copyright.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED**:

Plaintiffs' Expedited Motion to Preclude Defendant from Objecting to

Plaintiffs' Certificates of Copyright [Docket No. 288] is **DENIED**.

Dated: June 8, 2009

s/ Michael J. Davis
Michael J. Davis
Chief Judge
United States District Court